
UTAH LABOR COMMISSION

RUSSELL ROBINSON,

Petitioner,

vs.

**DAN SMITH dba
BEARFOOT CONSTRUCTION and
UNINSURED EMPLOYERS FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 08-1355

Dan Smith dba Bearfoot Construction ("Bearfoot") asks the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of Russell Robinson's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-2-801(3) of the Utah Workers' Compensation Act.

BACKGROUND AND ISSUE PRESENTED

Mr. Robinson claims workers compensation benefits for an injury he allegedly suffered while working for Bearfoot. Approximately one week before Mr. Robinson's claim was scheduled for hearing, his attorney informed Judge Marlowe that Mr. Robinson was incarcerated and would not be able to attend the hearing. Mr. Robinson therefore requested that his claim be dismissed without prejudice so that he could continue to pursue his claim upon his release. Judge Marlowe granted Mr. Robinson's request for dismissal without prejudice.

Bearfoot challenges Judge Marlowe's decision to dismiss Mr. Robinson's claim without prejudice. Bearfoot argues that allowing Mr. Robinson to bring his claim at a future date presents them with a potentially undue burden because Bearfoot will have difficulty keeping in contact with certain witnesses expected to participate in the hearing. Bearfoot contends that Mr. Robinson's claim should be dismissed with prejudice instead.

DISCUSSION AND CONCLUSION OF LAW

As a general rule, a claim such as Mr. Robinson's must be dismissed without prejudice when there has been no adjudication of the merits of the claim. Bearfoot argues that dismissing Mr. Robinson's claim without prejudice presents a potentially undue burden, but the Commission is not persuaded by this argument. Dismissal of Mr. Robinson's claim without prejudice is appropriate because there has been no consideration of the merits of the claim.

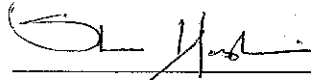
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Additionally, Bearfoot has not specified a particular witness that will become unavailable at a future date. Bearfoot merely points to the potentially undue burden of keeping track of its possible witnesses. Without a more definite demonstration of what Bearfoot claims to be an undue burden, the Commission's interest in adjudicating the merits of Mr. Robinson's claim clearly outweighs the concern for the potential burden of Bearfoot having to locate its own witnesses. The Commission therefore concurs with Judge Marlowe's decision to grant Mr. Robinson's request for dismissal without prejudice.

ORDER

The Commission affirms Judge Marlowe's decision of November 4, 2009, on this matter. It is so ordered.

Dated this 10th day of February, 2010.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.